IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2006

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

A.S.NO.352 OF 1993

1. Lakshmi(D1)
2. Minor Murugesan(D2)
3. Minor Varadarajan(D3)
4. Minor Nallammal(D4) .. Appellants
(Minor 2 to 4 rep by their
guardian as mother; 1st appellant)

-vs-

1. Susila(Plaintiff)
2. Thanam(D5)
3. Sundaram(D6) .. Respondents

This appeal was filed under Section 96 of C.P.C. against the decree and Judgment dated 27.4.1992 and made in O.S.No.85 of 1989 on the file of Subordinate Judge Ariyalur.

For appellants : : Mr.R.Rajarajan for Mr. S. Rajan

For respondents: : Mr.S.Parthasarathy,
Senior Counsel
for Mr.M.S.Krishnan-R1
No appearance-RR2 and 3.

JUDGMENT

This appeal has been preferred against the decree and Judgment in O.S.No.85 of 1989 on the file of the Sub Court, Ariyalur.

2. The averments in the plaint in brief are as follows:
The plaintiff,5th defendant, and 6th defendant are the sisters of the deceased Manicka Udayar, who was the husband of the 1st defendant and the father of defendants 2 to 4. Admittedly, the father of the plaintiff, 5th defendant, 6th defendant and the deceased Manicka Udayar, was one Nallathambi Udayar. According to plaintiff, the plaint schedule properties are the ancestral properties of Nallathambi Udayar,the father, who died intestate in the year 1979 leavingbehind him,his wife,the first defendant's husband Manicka Udayar, and his sisters, the plaintiff, 5th defendant and 6th defendant as his legal heirs. The plaintiff's mother also died in the year 1986 Nallathambi Udayar had no necessity to borrow any debts. There was no debt to the Hindu Joint Family on the death of Nallathambi Udayar. The plaintiff being an undivided member of the Joint Family of the deceased Nallathambi Udayar, is entitled to 1/4th share in all the suit properties on the death of her father along with defendants 1 to 6. Since the other defendants have not joined with the plaintiff, as

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co-owner, the plaintiff has come forward with the suit. Every year, plaintiff's brother Manicka Udayar used to give grains and cash for the maintenance of the plaintiff. The plaintiff's brother Manicka Udayar also died intestate on 20.5.1989 leaving behind him, his wife and children, who are defendants 1 and 2 to 4 respectively. After the death of Manicka Udayar, the plaintiff demanded defendants 1 to 4 for a partition. When the plaintiff approached defendants 1 to 4 for partition, due to evil advice of some mischief mongers, defendants 1 to 4 denied the share of the plaintiff in the suit properties by saying that the deceased Manicka Udayar had executed certain documents. Defendants 1 to 4 would contend that on 17.5.1989, Manicka Udayar had executed a registered Will, bequeathing all the suit schedule properties in favour of defendants 1 to 4. The plaintiff obtained a registration copy of the same on 21.6.1989. The alleged Will was not duly executed by the deceased Manicka Udayar. The alleged attestors and scribe of the said document are the henchmen of the 1st defendant. It ought to be a forged and concocted document. Even if, there is any Will, it will not bind the interest of the plaintiff and her sisters in respect of the suit schedule properties. Neither the plaintiff nor her sisters were parties to the said document. Only to deny, the plaintiff's due share in the plaint schedule properties, Defendants 1 to 4 have falsely created a right through the said Will. Defendants 1 to 4 refused to divide the suit property on 22.6.1989. The plaintiff does not want to remain joint with other sharers any more. Hence, the plaintiff has filed the suit for partition of her 1/4th share in the suit properties.

3.Defendants 1 to 4 have filed a joint written statement with the following averments:
The description of property given in the plaint Item 1 to the plaint schedule is not correct. It should be Sy.No.32/5. Items 6 to 9, 13 and 14 are not the family properties. They are not liable for partition. Item 15, part I of Item 5 and Item 22 are not liable to be partitioned because they are the separate properties of Manicka Udayar by virtue of sale deed dated 5.6.1974,18.9.1973 and 27.5.1953. The quantum of share claimed by the plaintiff is not correct. It is excessive. The deceased Manicka Udayar has bequeathed his properties under a registered Will dated 17.5.1989 suit items 1 to 5, 10 to 12 and 15 to 22 were conveyed to defendants 1 to 4 under the said Will by Manicka Udayar. It is the last Will executed by Manicka Udayar. The said Will has been registered under law. Hence the suit is liable to be dismissed.

4. 5th defendant remained exparte and 6th defendant has adopted the written statement filed by Defendants 1 to 4.

5. On the above pleadings, learned trial Judge, had framed seven issues and on the basis of oral and documentary evidence let in by both sides, has come to a conclusion that the plaintiff is entitled to 1/6th share in the plaint schedule property except in Item N0.15, Part of Item No.5 and Item No.22 and accordingly passed a preliminary decree. Aggrieved by the findings of the learned trial Judge, the plaintiff has preferred this appeal.

6. Now the points for determination in this appeal are

1) Whether the plaintiff is entitled to 1/4th share in the plaint schedule properties as per Section 6 of the Hindu Succession Act, 1956 ( 30 of 1956) as amended by the Hindu Succession (Amendment) Act,2005(39 of 2005)?

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2)Whether the plaintiff is entitled to any share in plaint schedule item 15, part of Item 5 and Item 22 to the plaint schedule properties in terms of the decree?

7. Point No.2:

While answering Issue No.6, at paragraph 5 of its Judgment, the trial Court has clearly observed that under ExB2, dated 18.9.1973, Manicka Udayar had purchased 1.73 acres of land in S.No.138/19 which is part of plaint schedule Item No.5. Under Ex B2 dated 5.6.1974, Manicka Udayar had purchased 67 cents west of 1.34 cents in S.No.323/15. But that S.No.323/15 was not scheduled to the plaint. It is the claim of the first defendant as D.W.1 that Ex B2 relates to plaint Item No.15 to the plaint schedule property but the plaint Item No.15 relates to S.No.210/15 A measuring 0.27.0 hectares. So as far as Item No.15 is concerned, the first defendant has not proved that Manicka Udayar had taken a sale deed in respect of plaint Item No.15. Ex B3 dated 27.5.1953 relates to plaint schedule Item NO.22. There is an evidence let in by D.W.1 to the effect that only from out of the jewels belonging to her, her husband Manicka Udayar had purchased the properties under Exs B1 to B3. So in respect of plaint schedule part of Item No.5 and also in respect of plaint schedule Item No.22 , the plaintiff cannot claim any share on the ground that they are joint family properties. Nallathambi Udayar, the father of the plaintiff, died in the year 1979. Exs B1 to B3 were taken even before the death of Nallathambi Udayar. The fact that those Exs B1 to B3 documents were not taken in the name of Nallathambi Udayar but in the name of Manicka Udayar had itself will go to show that the properties purchased under Exs B1 to B3 are self acquired properties of Manicka Udayar. As far as Item No.15 is concerned, Ex B2 does not relate to the plaint schedule Item No.15, consist of S.No.210/15 A measuring 0.27.0 hectares. So the plaintiff cannot get any share in part of Item No.5 and Item No.22 to the plaint schedule property. But the plaintiff is entitled to her due share in plaint schedule Item No.15 ie., S.No.210/15 A measuring 0.27.0 hectares,since Ex B2 does not relate to the said plaint schedule property Item No.15 relating to S.No.210/15A. Hence I hold on the point No.2 that the plaintiff is entitled to a preliminary decree for partition for her due share which is to be declared in point No.1 hereunder in respect of plaint Item No.15 to the suit property and other properties except in part of item No.5 and item No.22 to the plaint schedule properties.

8. Point No.1:

The plaintiff is one of the daughters of the deceased Nallathambi Udayar. According to the plaintiff, the plaint schedule properties are the Hindu Joint Family Properties of Nallathambi Udayar and under Section 6 of the Hindu Succession Act, 1956( 30 of 1956) as amended by the Hindu Succession (Amendment) Act,2005(39 of 2005), the plaintiff would claim that she is entitled to 1/4th share in the plaint schedule properties, since there was no partition among the co sharers of the Hindu Joint Family of Nallathambi Udayar, till his death. Even though, the defendants would claim right under the alleged "Will" dated 17.5.1989 said to have been executed by Manicka Udayar in favour of his wife. 1st defendant and his minor sons defendants 2 to 4, the said "Will" Ex B4 was not proved by examining at least one of the attestors to Ex B4 "Will". Ex B4 was not proved as contemplated under the provisions under Section 68 of the Evidence Act or under Sections 66 and 69 of the Indian Succession Act. So under Ex B4 "Will", the defendants 2 and 3 cannot claim any right as correctly held by

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the learned trial Judge in Issue Nos.3 and 4 that the beneficiaries under Ex B4 "Will" cannot claim any right in respect of the suit properties because Ex B4 was not proved before the trial Court.

9. The plaintiff relying on Section 6 of the Hindu Succession Act,1956(30 of 1956) as amended by the Hindu Succession (Amendment) Act,2005 (39 of 2005),would claim that after the said amendment to the Hindu Succession Act in the year 2005, by birth, the plaintiff being a daughter of Nallathambi Udayar will be entitled to an equal share in the Hindu Joint Family properties of Nallathambi Udayar as that of the son of Nallathambi Udayar viz., Manicka Udayar. According to the plaintiff, the other two daughters of Nallathambi Udayar , viz., Defendants 5 and 6 are also entitled to an equal share in the Hindu Joint Family Property of Nallathambi Udayar. Section 6 of the Hindu Succession Act, 1956( 30 of 1956) as amended by the Hindu Succession(Amendment) Act,2005(39 of 2005) runs as follows:

> "(1) On and from the commencement of the Hindu Succession (Amendment ) Act , 2005, in a joint Hindu Family governed by the Mitakshara law, the daughter of a coparcener shall,-
>
> (a) by birth become a coparcener in her own right in the same manner as the son;
> (b)have the same rights in the coparcenary property as she would have had if she had been a son;
> (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener;
>
> Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the20th day of December,2004.
> (2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.
> (3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,-
> (a) the daughter is allotted the same share as is

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allotted to a son;
(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and
(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.
Explanation:- For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.
(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no Court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu Law, of such son, grandson,or great-grandson to discharge any such debt:
Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment ) Act , 2005, nothing contained in this sub-section shall affect-
(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or
(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act,2005 had not been enacted.
Explanation:- For the purposes of clause(a),the expression"Son","grandson" or"great grandson" shall be deemed to refer to the son, grandson or great grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.
(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.
Explanation:- For the purposes of this section"partition' means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by the decree of a Court)".

10)The learned counsel appearing for the defendants/appellants would contend that after the death of Nallathambi Udayar, his son Manicka Udayar, the husband of the first defendant, also died on 20.5.1989 and till his death, the plaintiff has not claimed any share in the Hindu

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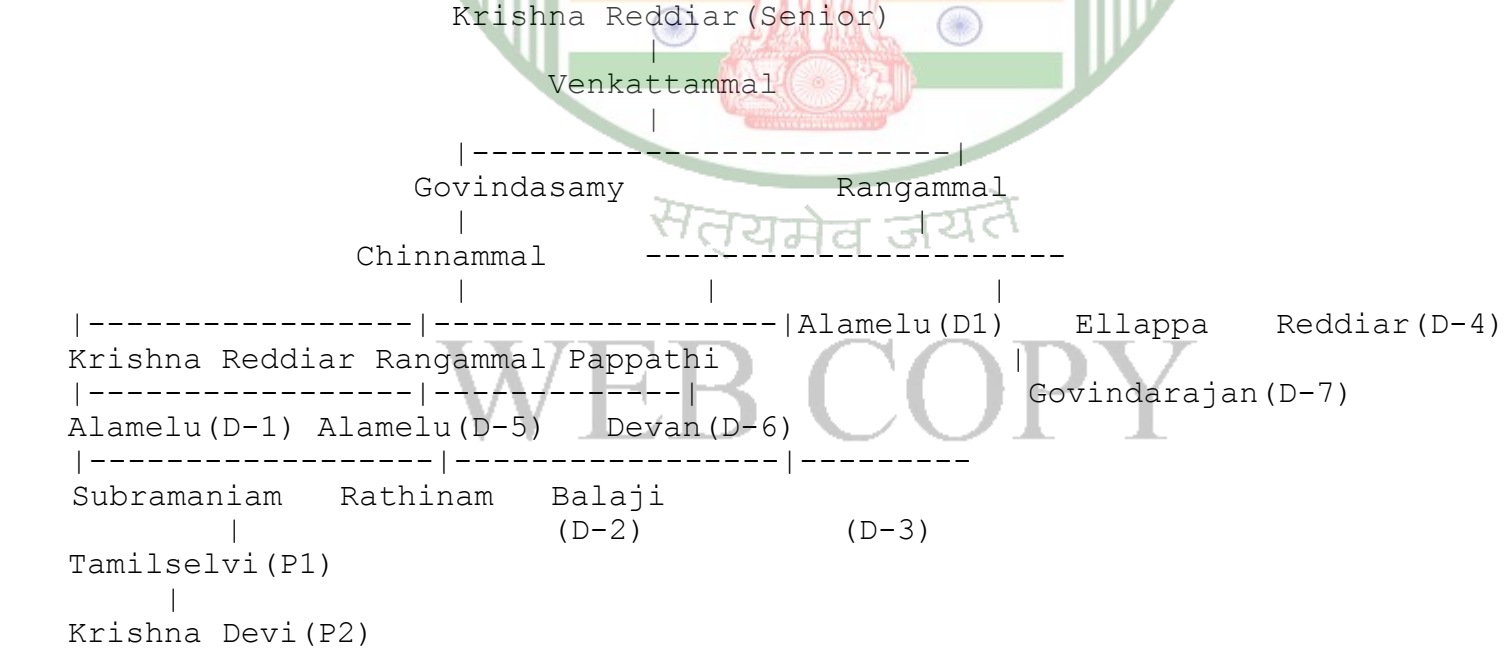
Joint Family Property. She had filed a suit in the year 1989, soon after the death of Manicka Udayar. The learned counsel relying on a decision reported in Alamelu Ammal and others-vs- Tamizh Chelvi and others(2004)3 M.L.J.620) would contend that notwithstanding the fact that the properties had devolved on the heirs under Sections 6 and 8 of the Hindu Succession Act, prior to the commencement of Section 29 A of the said Act as a coparcener , the plaintiff is entitled to a share in the coparcenery property. The short facts of the case is that one Krishna Reddiar ( Senior)had a son, by name Govindasamy Reddiar and a daughter, by name Rangammal. His wife was Venkattammal and she died in the year 1953. Govindasamy Reddiar, son of Krishna Reddiar(Senior), died on 19.4.1964. Govindasamy Reddiar had one son, by name, Krishna Reddiar(Junior) and two daughters, namely, Rangammal and Pappathi. The wife of Krishna Reddiar (Junior) is one Alamelu ammal, who is the first defendant in the suit. Krishna Reddiar(junior)'s sister Rangammal had a daughter, by name, Alamelu ammal and she is the fifth defendant in the suit. Krishna Reddiar (Junior)'s another sister Pappathi Ammal had a son, Devan and he is the sixth defendant. Krishna Reddiar(Junior) had a son, by name, Subramaniam and two daughters, namely, Rathinam(2nd defendant) and Balaji alias Balammal(3rd defendant). Subramaniam son of Krishna Reddiar(Junior) died on 15.2.1986 leaving behind his wife, Tamilselvi and daughter,Krishna Devi. The wife and the daughter of Subramaniam are the plaintiffs in the suit. Govindasamy Reddiar, father of Krishna Reddiar(Junior) had a sister, by name, Rangammal and she died on 14.8.1957. She had a son, by name, Ellappa Reddiar who is the fourth defendant and his son Govindarajan is the seventh defendant. It is also relevant to mention her that Alamelu ammal, first defendant is the daughter of Rangammal, who is the daughter of Krishna Reddiar(Senior) and Krishna Reddiar(Junior) had married his paternal aunt's daughter, Alamelu ammal. For the purpose of convenience, we set out hereunder the genelogy tree of the family.




The plaintiffs have filed the suit for partition claiming 5/8th share in the suit properties and also for delivery of possession and mesne profits and other incidental reliefs. The plaintiff claims a share in the Hindu Joint Family as that of a son under Section 29 A of the Hindu Succession Act which was inserted by the Tamil Nadu Act 1 of 1990 with effect from

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25.3.1989. It has been held in the said appeal that an unmarried daughter does not become a coparcener only from the date of insertion of Section 29 A of the Hindu Succession Act but she becomes a coparcener by virtue of her birth in the family of a Hindu. It has been further held by a Division Bench that Section 29 A of the Hindu Succession Act gives a special statutory right to daughters in a Hindu undivided family and a daughter of a Hindu, if not married before the commencement of the Hindu Succession (Tamil Nadu Amendment) Act 1989, is treated as a coparcener subject to certain conditions contained in Section 29 A of the Hindu Succession Act, but her rights are equal to that of a son in the Hindu family and she is regarded as a coparcener with a right by birth in the family properties. Section 29-A begins with the non obstante Clause, notwithstanding anything contained in Sec.6 of this Act' which clearly indicates that the provisions of Sec.29-A would override the provisions of Sec. 6 of the Hindu Succession Act..... We are of the view that Sec.29-A is a special provision giving a statutory right to a daughter treating her as a coparcener in the family and if such right by birth is given to the daughter, it must mean that she gets the right by birth in the family properties from the date of her birth and it is not a right that would accrue only on the commencement of the Tamil Nadu Amendment Act,1989. As already held by us, though Sec.29-A of the Hindu Succession Act is prospective in operation, it takes note of the events that happened prior to the insertion of Sec.29-A of the Hindu Succession Act in its operation. Therefore, we are of the view that if any alienation or gift of immovable property was made by the sole surviving coparcener or the Kartha of the family during the interregnum period from the date of birth of a daughter till the date of commencement of the Tamil Nadu Amendment Act, 1989, such an alienation or gift of the family property is liable to be questioned by an unmarried daughter as if she is a coparcener, but we are of the view that the ground of challenge would be limited and the Court would be considering the question of validity of any alienation or transfer made by the said coparcener in the light of the provisions of Sec.29-A of the Act that the daughter became a coparcener only by virtue of that Section which was inserted subsequent to such alienation or transfer. After referring to S.Sai Reddy .v.S.Narayana Reddy (1991)3 S.C.C.647, M.Shanmugha Udayar.v.Sivanandam (1993)2 M.L.J., 617: AIR 1994 Mad.123, Kokila.v.Swathanthira and others (2004) 3 L.W.60,the Division Bench of this Court has observed further as follows:

> "On the difference of opinion between two learned Judges has held that Sec.29-A of the Hindu Succession Act is a deviation from Sec.6 of the said Act and an unmarried daughter can, under Sec.29-A of the Act, claim right equal to a son in spite of specific devolution of interest in coparcenary properties as contained in Sec.6 of the Act. We are of the view that though the properties devolved on the plaintiffs as well as the mother of Subramaniam, first defendant in the suit and vested in them in the year 1986 on the death of Subramaniam since partition in the family had not taken place by metes and bounds as provided under Clause (v) of Sec.29-A of the Hindu Succession Act, the rights devolved on the family members would get altered and the second plaintiff would be entitled to claim her share as a coparcener in the coparcenary properties left by Subramaniam as if she had a right by birth in the coparcenary properties. We are of the

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> view that any other construction would defeat the avowed purpose and object of Sec.29-A of the Hindu Succession Act as the legislature has indicated that Sec.29-A of the Act has excepted from its operation only two cases, namely, where partition was effected prior to the commencement of the Hindu Succession (Tamil Nadu Amendment) Act,1989 or where the daughter got married before the commencement of the said Amendment Act and in all other cases the necessary implication is Sec.29-A of the Hindu Succession Act would apply and consequently, the shares,if any, devolved on the members of the family under Sec.6 of the Hindu Succession Act would get altered and their rights in the family properties have to be redetermined by applying the provisions of Sec.29-A of the Hindu Succession Act and ultimately, second plaintiff was declared 1/8th share in the coparcenary properties held by Sivasubramaniam.

It is clear from the above said dictum that to get benefits under Section 29-A of the Hindu Succession Act, the daughter, who claims the right under Section 29-A of the Hindu Succession Act shall be unmarried at the time, when the Hindu Succession Act 1989,(Tamil Nadu Amendment Act 1989) came into force or there shall be a partition in the Hindu Joint Family before 1989 ie., before the Hindu Succession Act (Tamil Nadu Amendment Act) came into force. This suit was filed in the year 1989. It is seen from the plaint that the plaintiff Susila got married to one Kulandaivelu Udayar even on the date of filing of the suit as seen from the long cause title to the plaint. So the above said dictum will not be applicable to the present facts of the case.

11. The learned counsel appearing for the appellants relying on a decision reported in Eramma-v- Veerupana and others(AIR 1966 Supreme Court 1879(V 53 C 380) and contended that Sections 6 and 8 of the Hindu Succession Act are not retrospective in operation and where a male Hindu died before the Act came into force ie., where succession opened before the Act, Section 8 will have no application. The learned counsel would contend that even before 1989 Amendment Act came into force, Nallathambi Udayar, his widow, and his son Manicka Udayar died and hence the learned counsel would contend that the Act has no retrospective effect only prospective and that till the filing of the suit, there was no partition between the co sharers in the Joint Family of Nallathambi Udayar and hence the learned counsel would contend that the plaintiff cannot claim 1/4th share in the suit property. The short facts of the above said ratio runs as follows:

> "The appellant, Eramma and the 3rd respondent, Siddamma were, at the relevant time, widows of Eran Gowda who also had a third wife, Sharnamma. By the said Sharnamma, Eran Gowda had a son calleld Basanna who died in the year 1347 F(corresponding to 1936-37 A.D) at a time when he was the sole male holder of the property in dispute. After his death his step mothers Eramma and Siddamma got into possession of the properties. Respondents 1 and 2 thereafter filed a suit in the Sadar Adalat, Gulbarga claiming that they, as the nearest heirs of Basanna, were entitled to all the

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properties left by him and seeking to recover possession thereof from his step mothers-Eramma and Siddamma. The suit was contested by Eramma on the ground that she had adopted Sogan Gouda, respondent No.4 on the basis of the authority alleged to have been given to her by her husband Eran Gowda. It was claimed by Siddamma that she had adopted Shanappa, respondent No.5 on the basis of the authority alleged to have been conveyed under a Will. The trial Court rejected the case of Eramma but upheld that of Siddamma . On appeal to the High Court, Siddamma's claim of adoption was also negatived. In the result the High Court passed a decree in favour of respondents 1 and 2. Eramma and Siddamma thereafter applied to the High Court for a certificate of fitness to appeal to the Apex Court. Siddamma was granted such certificate but the High Court refused to grant a certificate to Eramma who filed an application in the Apex Court for special leave. During the pendency of these proceedings the Hindu Succession Act , 1956 came into force with effect from June 17,1956. Respondents 1 and 2 have put to execution the decree granted by the High Court in their favour. Eramma filed an objection in the Execution Court on the ground that she had been in possession of half the properties since the death of her husband and the decree was non executable in view of the provisions of the Hindu Succession Act, 1956 and that she had now become full owner of the properties of which she is in possession. The case of Eramma was accepted by the District Judge, Raichur who dismissed the execution case on February 14,1957. Respondents 1 and 2 preferred an appeal to the Mysore High Court against the order of the District Judge, dismissing the execution case. The appeal was allowed by the High Court on the ground that Hindu Succession Act 1956 was not applicable to the case and Eramma did not acquire full ownership under S.14(1) of that Act. The High Court accordingly set aside the order of the District Judge dated February 14, 1957 dismissing the execution case and restored the execution case to file of the District Judge for being dealt with in accordance with law".

It has been held by the Apex Court as follows:

"There is nothing in the language of this Section to suggest that it has retrospective operation. The words" The property of a male Hindu dying intestate" and the words"shall devolve" occurring in the section make it very clear that the property whose devolution is provided for by that section must be the property of a person who dies after the commencement of the Hindu Succession Act. Reference may be made, in this connection, to S.6 of the Act which states:

"When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in

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accordance with this Act;
Provided that if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession as the case may be, under this Act and not by survivorship.
It is clear from the express language of the section that it applies only to coparcenary property of the male Hindu holder who dies after the commencement of the Act. It is manifest that the language of S.8 must be construed in the context of S.6 of the Act. We accordingly hold that the provisions of S.8 of the Hindu Succession Act are not retrospective in operation and where a male Hindu died before the Act came into force ie., where succession opened before the Act,S.8 of the Act will have no application".

The above said proposition of law, has once again reiterated by the latest Judgment of the Apex Court in Sheela Devi-vs-Lal Chand (2006(10 Scale 75). The short facts of the case are as follows:
"One Tulsi Ram was the owner of the property. He died in the year 1889 leaving behind five sons, viz., Waliati, Babu Ram, Charanji Lal, Hukam Chand and Uggar Sain. The aforementioned five sons of Tulsi Ram were members of a Mitakshara Coparpcenary . We are concerned with the estate of one of the sons of Tulsi Ram, v.z, Babu Ram, whose children are parties before us. It is not in dispute that Uggar Sain died issueless in 1931. The names of all the brothers were mutated in the year 1927 in respect of the properties left by Tulsi Ram. Babu Ram, died in the year 1989 leaving behind two sons, viz., Lal Chand and Sohan Lal( Plaintiffs-respondents) and three daughters(Appellants herein).Lal Chand was born in 1938 whereas Sohan Lal was born in 1956. A finding of fact has been arrived at that the parties are governed by the Mitakshara School of Hindu Law. The sons of Tulsi Ram were , thus, coparceners. Upon the death of Tulsi Ram, Babu Ram inherited 1/5th share in the property. However, on the death of Uggar Sain, 1/20th share of Tulsi Ram's property was also devolved on him. Indisputably, the names of the parties were shown in the revenue records having 1/5th share each. The said order of the revenue authorities came to be challenged by plaintiffs/respondents herein, inter alia,on the premise that defendants had not acquired any right, title and interest in the property. The suit of the plaintiffs was decreed declaring 1/5th share, holding that the plaintiffs and Babu Ram had constituted a Joint Hindu Family and out of the land in suit 1/5th share was separate property of Babu Ram and 4/5th share was ancestral property in the hands of Babu Ram qua the plaintiffs. The first appellate Court affirmed the decree of the learned trial Judge. In the second appeal, the substantial question of law discussed and taken up and decided by the High Court was whether Section 8 of the Hindu Succession Act would apply to the facts of the present case or the law applicable,prior to the enforcement of 1956 Act would apply?. It was opined by the High Court that having held that the nature of the property must be recorded as Hindu Coparcenary and ancestral property, it was stated that the law applicable before the Act came into force would govern the rights of the parties and not the provisions of the Act. It was contended before the Apex Court against the findings of the High Court that the High Court had committed a manifest error in arriving

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at the aforementioned finding in total disregard to the provision of 1956 Act. The dictum of the Apex Court is as follows:

> "In Eramma v.Veerupana and others(AIR 1966 SC 1879), this Court observed.
> "It is clear from the express language of the section that it applies only to coparcenary property of the male Hindu holder who dies after the commencement of the Act. It is manifest that the language of Section 8 must be construed in the context of Section 6 of the Act. We accordingly hold that the provisions of Section 8 of the Hindu Succession Act are not retrospective in operation and where a male Hindu died before the Act came into force ie., where succession opened before the Act, Section 8 of the Act will have no application."
>
> The Act indisputably would prevail over the old Hindu Law. We may notice that the Parliament, with a view to confer right upon the female heirs, even in relation to the joint family property, enacted Hindu Succession Act, 2005. Such a provision was enacted as far back in 1987 by the State of Andhra Pradesh. The succession having opened in 1989, evidently, the provisions of Amendment Act, 2005, would have no application. Sub Section (1) of Section 6 of the Act governs the law relating to succession on the death of a coparcerner in the event the heirs are only male descendants. But, proviso appended to Sub section (1) of Section 6 of the Act creates an exception."

So the above said ratio will be applicable in four corners to the present facts of the case. Even before the Hindu Succession (Amendment)Act 2005 came into force in the year 2005, the Hindu Joint Family property devolved on Defendants 2 and 3 , the sons of Manicka Udayar.

12) As enumerated in "The Mulla Hindu Law" 19th Edition page 210 a joint or undivided Hindu family may consist of a single male member and widows of deceased male members. The property of a joint family does not cease to be joint family property belonging to any such family merely because the family is represented by a single male member (coparcener) who possesses rights which an absolute owner of a property may possess. Thus, for instance, a joint Hindu family may consist of a male Hindu, his wife and his unmarried daughter. It may similarly consist of a male Hindu and the widow of his deceased brother. It may consist of a male Hindu and his wife. It may even consist of two female members. However, there must be at least two members to constitute it. An unmarried male Hindu on partition does not by himself alone to constitute a Hindu undivided family. The basis of the rule that there need not be at least two male members to constitute a Hindu undivided family is that the joint family property does not cease to be such, simply because of the temporary reduction of the coparcenary unit to a single individual; the character of the property remains the same. The existence of at least one male member is essential for constituting a joint family with other members. There can be a smaller Hindu undivided family within a larger undivided family. Statutes enacted for regulating succession are not applicable to successions which had already opened, as otherwise the effect will be to divest the estate

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from persons in whom it had vested prior to coming into force of the new statute. The material point of time, for applicability of a law altering the order of succession is the date when succession opens thereafter. It was, therefore, held that the Hindu Law of Inheritance( Amendment) Act, 1929, applied to a case where the female heir died after the coming into force of the Act though the male to whom she had succeeded had died prior to its enforcement. It has been held by in the following Judgment of the Apex Court that Hindu Law of Inheritance (Amendment) Act 1929 it is not given a retrospective operation as to deprive persons of rights already vested with them for under the Hindu Law a female heir, though a limited owner, fully represents the estate and the reversioners during her life time have no interest in it. The relevant passage in Fatch Bibi etc.v.Charan Dass(AIR 1970 Supreme Court,789)runs as follows:

> " The plaintiff instituted Suit No.41 of 1955 in the Subordinate Judge's Court, Jagraon, against the original defendant for recovery of possession of the suit properties. According to the plaintiff, Kirpa Ram was the last owner of the properties. Even during his life time his only son Charanji Lal had died. On the death of Kirpa Ram, his widow Bishan Devi became the owner of the properties and was in possession of the properties for her lifetime. After the death of Bishan Devi, her daughter Maya Devi(daughter of Kirpa Ram and Bishan Devi) became her heir and remained in possession of the property till her death. After Maya Devi's death, according to Dharma Shastras the plaintiff, as the daughter's son of Kirpa Ram, was entitled to succeed to the properties which were in the possession of Bishan Devi and later on of Maya Devi, his mother. It was alleged by the plaintiff that the defendant, after the death of Bishan Devi claiming to be entitled to the properties of Kirpa Ram, got mutation in the Revenue Register effected in his name on or about January 6,1947. Therefore, according to the plaintiff, the defendant had no right, title, or interest to the properties of Kirpa Ram and the mutation obtained by him could not affect the rights of the plaintiff as the daughter's son of Kirpa Ram. On these allegations the plaintiff prayed for a declaration regarding his title to the property and for recovery of possession of the same from the defendant. The defendant contested the claim of the plaintiff on various grounds. He alleged that Charanji Lal did not pre decease Kirpa Ram but, on the other hand, after the death of Kirpa Ram, Charanji Lal, his son, became heir and was in possession of the properties left by his father. Charanji Lal died long afterwards, in or about 1926 and, after his death, his mother Bishan Devi became heir to the property left by Charanji Lal, for her life time. After the death of Bishan Devi the defendant claimed that he, as a collateral of Kirpa Ram, became entitled to the properties of the latter and, as such, got mutation effected in his favour, according to law. He further averred that Maya Devi did not at all come into possession of the estate after the death of Bishan Devi. In fact the defendant even

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disputed the fact that Maya Devi was the daughter of Bishan Devi. Even if Maya Devi was the daughter of Bishan Devi, the defendant alleged that according to the custom governing the parties, Maya Devi, had no right to the properties left by Bishan Devi, On these allegations, the defendant maintained that he was rightly entitled to the properties of Kirpa Ram and that the plaintiff has no cause of action for having the mutation effected in the Revenue Registers in his favour cancelled. The trial Court decreed the suit. In the first appeal, the trial Court Judgment was confirmed. In the second appeal also reversed the findings of the trial Court and the first appellate Court and dismissed the plaintiff's suit. Hence the plaintiff had preferred the appeal before the Apex Court, wherein it has been held that the Judicial Committee had held that the Act which altered the order of succession of certain persons mentioned therein and which came into operation on February 21,1929 applies not only to the case of a Hindu male dying intestate on or after February 21,1929 but also to the case of such a male dying intestate before that date if he was succeeded by a female heir who died after that date. The Judicial Committee, has further held that succession in such cases to the estate of the last Hindu male who died intestate did not open until the death of the life-estate holder. It has also been held that during the life time of the life-estate holder, the reversioners in Hindu Law have no vested interest in the estate and that they have a mere spes successionis. It was contended before the Judicial Committee that the words"Hindu male dying intestate" occurring in the preamble to the Act connotes the future tense, of a Hindu male dying after the Act has come into force. This contention was rejected by the Judicial Committee, which observed as follows:

" In the argument before their Lordships reliance was placed on the words"dying intestate" in the Act as connoting the future tense, but their Lordships agree with the view of the Lahore High Court in IL:R 17 Lah 356 =(AIR 1936 Lah 124) that the words are a mere description of the status of the deceased and have no reference, and are not intended to have any reference, to the time of the death of a Hindu male. The expression merely means 'in the case of a intestacy of a Hindu male'. To place this interpretation on the Act is not to give a retrospective effect to its provisions, the material point of time being the date when the succession opens, namely, the death of the widow".

We are in entire agreement with the above observations of the Judicial Committee and accordingly hold that the point of time for the applicability of the Act is when the succession opens, viz., when the life estate terminates. In consequence, it must be further held that the questions as to who is the nearest

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> reversionary heir, or what is the class of reversionary heirs will fall to be settled at the date of the expiry of the ownership for life or lives. The death of a Hindu female life-estate holder opens the inheritance to the reversioners and the one most nearly related at the time to the last full owner becomes entitled to the estate.
>
> We hold that the Act applies also to the case of a Hindu male dying intestate before the Act came into operation and has been succeeded by a female heir who died after that date. In this case, on the findings recorded by all the Courts, the last female heir died only on March 25,1950 and, under the Act, the plaintiff , as the sister's son of Charanji Lal, is entitled to succeed to his estate, in preference to the defendant who is only a paternal uncle. We have already pointed out that the paternal uncle is postponed to the four relations referred to in the Act, the last of whom is the sister's son.

The sum and substance of the above said dictum is that while applying the amended Act to the existing Hindu Succession Act, the principle is that a vested right which had already devolved on a coparcenary member cannot be divested by the amended Act.

13. So coming to the facts of the present case, Nallathambi Udayar had a son by name Manicka Udayar and the plaintiff, defendants 5 and 6 are his sisters. Nallathambi Udayar died in the year 1979, his widow also died in the year 1986. His son Manicka Udayar died in the year 1989. So in the Hindu Joint Family property of Nallathambi Udayar and Manicka Udayar were entitled to ½ share each. After the death of Nallathambi Udayar, his ½ share devolved on five sharers viz., his widow, his son Manicka Udayar,his daughters plaintiff, defendants 5 and 6. So in the ½ share of Nallathambi Udayar, the widow is entitled to 1/10 share, the plaintiff is entitled to 1/10 share 5th defendant is entitled to 1/10 share,6th defendant is entitled to 1/10 share and Manicka Udayar also will be entitled to 1/10 share. After the death of the wife of Nallathambi Udayar, her 1/10th share devolved on four persons viz., the plaintiff, defendants 5 and 6, and Manicka Udayar. So the plaintiff is entitled to 1/10 + 1/40= 1/8th share; 5th defendant is entitled to 1/10 + 1/40= 1/8th share; 6th defendant is entitled to 1/10 + 1/40= 1/8th share and Manicka Udayar besides his ½ share, will also entitled to 1/8 share which devolved on his wife and his sons defendants 2 and 3. Under such circumstances, the plaintiff will be entitled to 1/8th share and not 1/6th share in the plaint schedule property except part of Item No.5 and Item No.22 to the plaint schedule. The point No.1 is answered accordingly.

14. In fine, the appeal is allowed and the decree and Judgment in O.S.No.85 of 1989 on the file of Sub Court, Ariyalur is modified and a preliminary decree for partition of plaintiff's 1/8th share is passed except in part of Item No 5 and Item No.22. The manner of partition is

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relegated to the final decree proceedings. The trial Court is directed to dispose of the matter within a period of two months from the date of receipt of a copy of this order. Taking into consideration of the close relationship of the parties, there will be no order as to costs.
sg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Subordinate Judge,
Ariyalur

2. Tbe Record Keeper, VR Section
High Court, Madras

+ one cc to Mr. G. Rajan, Advocate sr no. 53374
+ one cc to Mr. M.S. Krishnan, Advocate sr no. 53793

JRG(CO)
NM(27.12.2006)

A.S.No.352 of 1993

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